



# ***CITY COUNCIL AGENDA REPORT***

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MEETING DATE: 05/05/09

ITEM NUMBER: **IX-1**

**SUBJECT:** BUSINESS IMPROVEMENT AREA (BIA) REAUTHORIZATION

**DATE:** 04/23/09

**FROM:** CITY MANAGER'S OFFICE

**PRESENTATION BY:** ANN C. SHULTZ - LEGISLATIVE AND PUBLIC AFFAIRS MANAGER

**FOR FURTHER INFORMATION CONTACT:** ANN C. SHULTZ - LEGISLATIVE AND PUBLIC AFFAIRS MANAGER AT (714) 754-5667

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## **RECOMMENDATION:**

That the City Council: 1) approve and file the annual report for the Business Improvement Area (BIA) for Fiscal Year 2009-2010, and 2) adopt a Resolution of Intention including: reauthorization of the BIA Assessment District boundaries; approval of the BIA budget; and the setting of a Public Hearing for June 16, 2009.

## **BACKGROUND:**

In 1995, the City Council adopted Ordinance No. 95-9 to establish a Business Improvement Area (BIA) for the purpose of assisting the Hotel and Motel Industry in their promotion of tourism within the City. The BIA imposed a one percent (1%) assessment on the sale of hotel and motel overnight guest room stays. This money was to be used for the establishment and maintenance of a local tourism and promotion council. The Costa Mesa City Council authorized the City Manager to contract with the Costa Mesa Tourism and Promotion Council to develop and administer the BIA. The Council later became the Costa Mesa Conference and Visitor Bureau. The Bureau's Board of Directors is comprised of the ten (10) general managers of the participating hotels, a representative from the City Council, and the City Manager or his designee.

In January of 2000, the participating hotels requested, and the City Council approved an increase in the assessment from one percent (1%) to two percent (2%).

## **ANALYSIS:**

The authority to develop a Business Improvement Area is detailed in the Streets and Highways Code, Section 36500. This State law enables Costa Mesa to impose an assessment fee on businesses within an area designated by the City. All of Costa Mesa has been designated as the BIA benefit zone. Currently the number of properties included in the BIA assessment levy is limited to the ten hotels that have expressed an interest in participating in the program as detailed in the attached Resolution of Intention (Attachment 1).

As a function of the renewal process, all ten affected property owners will be legally noticed of the assessment renewal and provided an opportunity to "protest" the annual assessment through the public hearing process. Staff will also notice all the hotels and motels in the City not currently included in the BIA to allow them the opportunity to be included in the BIA. The notice will indicate that hotels/motels wishing to be included may attend the Public Hearing on June 16 to address that issue. The City Council makes the ultimate decision as to the size of, and the properties to be included in the BIA.

Once the annual assessment is approved, the assessment is then collected along with the City's Transient Occupancy Tax (TOT). The hotels/motels included in the BIA are required to itemize the BIA levy as a separate assessment. The Bureau dictates the expenditure of the annual assessment.

In addition, the Bureau has prepared the attached Annual Report, as required by Section 36533 of the Streets and Highways Code. The Annual Report summarizes the Bureau's activities and accomplishments over the past year and is included as Exhibit B of the Resolution of Intention (Attachment 1). The Annual Report also details the projected budget for the coming fiscal year. The City Council may approve the report or modify any particular item(s), and approve as amended.

Lastly, Mayer, Hoffman, McCann P.C. has completed the annual audit of the Bureau for the fiscal year ending on June 30, 2008, as required by the Professional Services Contract in effect between the City and the Costa Mesa Conference and Visitor Bureau. The existing agreement with the Bureau provides for the preparation of an annual audit paid for from the BIA assessment. The audit is intended to ensure that the assessment revenue is expended for public purposes as specified within the resolution and that no expenditures are made in a manner contrary to the agreement. The audit is included in the Annual Report and contains a couple of findings as noted on pages 4 and 5:

- Over \$100,000 was spent on the Dine Around Costa Mesa program which was not specified in the Bureau's annual plan.
- Total bank balances carried with American Security Bank as of June 30, 2008 were \$179,845 of which \$79,845 were in excess of federally insured limits. Total bank balances carried with Irwin Union Bank as of June 30, 2008 were \$211,409 of which \$111,409 was in excess of federally insured limits.

The Bureau has indicated that they will be reviewing and responding to the two points.

#### **ALTERNATIVES CONSIDERED:**

1. Do not adopt the Resolution of Intention.

#### **FISCAL REVIEW:**

\$888,447 has been collected through the BIA for the period from July 2008 through February 2009. The CMCVB is estimating that it will generate a total of \$1,169,000 for the entire fiscal year ending on June 30, 2009. Its' expenditures are projected at \$1,100,000. Expenditures include items such as the advertising campaign, media relations and industry Fam tours (tours for industry professionals, such as travel writers

and conference planners, sponsored by the CMCVB), brochures/promotional items, trade shows, administration, special promotions and hotel niche marketing.


The City continues to provide a moderate level of assistance to CMCVB and receives one percent (1%) of the BIA assessment as reimbursement for collection and administrative costs. The one percent (1%) allocated to the City for reimbursement is estimated at \$11,690 for the coming fiscal year. This fee will sufficiently cover the costs incurred by the City in assisting the Bureau. An audit of the CMCVB's expenditures has been completed by the City's independent auditor to determine if the expenditures are in compliance with State law and the agreement with the City. This is included in the attached Annual Report.

#### **LEGAL REVIEW:**

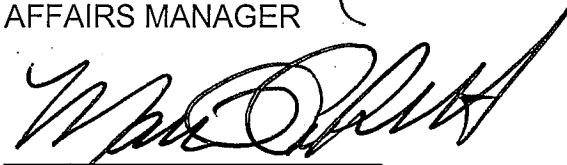
The City Attorney's Office has prepared the attached Resolution of Intention pursuant to the Parking and Business Improvement Area Law of 1989. No further legal review is required at this time.

#### **CONCLUSION:**

This is the initial step in the re-authorization of the BIA assessment. As with other assessment districts, State law sets up a specific procedure to be followed in the establishment of such an area. Staff will be making a presentation to the City Council on the implementation of the BIA assessment at the Public Hearing on June 16, 2009.

  
ANN C. SHULTZ  
LEGISLATIVE & PUBLIC  
AFFAIRS MANAGER

  
THOMAS R. HATCH  
ASSISTANT CITY MANAGER

  
MARC R. PUCKETT  
DIRECTOR OF FINANCE

  
KIMBERLY HALL BARLOW  
CITY ATTORNEY

Attachments    1        Resolution of Intention

DISTRIBUTION:    CMCVB  
                         Chamber of Commerce

## **ATTACHMENT 1**

### RESOLUTION NO. 09-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, DECLARING ITS INTENTION TO LEVY AN ANNUAL ASSESSMENT FOR FISCAL YEAR 2009-2010 FOR A BUSINESS IMPROVEMENT AREA COVERING CERTAIN COSTA MESA HOTELS AND MOTELS AND SETTING THE TIME AND PLACE FOR A PUBLIC HEARING ON PROPOSAL.

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY RESOLVE AS FOLLOWS:

WHEREAS, the California Legislature in adopting the Parking and Business Improvement Area Law of 1989 (Streets & Highways Code § 36500 *et. seq.*) authorized cities to levy assessments on businesses in order to promote economic revitalization and tourism, to create jobs, attract new businesses, and prevent erosion of business districts; and

WHEREAS, on July 5, 1995, by Ordinance No. 95-9, the City Council adopted a business improvement area, commonly known as the Costa Mesa Tourism & Promotion Business Improvement Area, the purpose of which is to promote tourism to the City and to fund programs that benefit the hotel and motel businesses within the City of Costa Mesa; and

WHEREAS, the City Council has voted to continue the special assessment for the Costa Mesa Tourism & Promotion Council Business Improvement Area each year since its inception, including the adoption in June, 2008, of Resolution No. 08-35 authorizing the assessment for fiscal year 2008-2009; and

WHEREAS, in January 2000, the City Council approved an increase in the assessment, raising the assessment from one percent (1%) to two percent (2%). The

two percent (2%) assessment is based on the sale of overnight room stays; and

WHEREAS, this Resolution of Intention will commence proceedings under the Parking and Business Improvement Area Law of 1989 (Streets & Highways Code § 36541) to levy the annual assessment of the Costa Mesa Tourism & Promotion Council Business Improvement Area for the 2009-2010 fiscal year;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Costa Mesa as follows:

Section 1. Assessment. An annual assessment for the Costa Mesa Tourism & Promotion Council Business Improvement Area is proposed to be levied pursuant to Streets & Highways Code § 36500 *et seq.* The proposed boundaries of the territory are the ten motels and hotels listed in Exhibit A, attached hereto and incorporated herein by this reference. The proposed amount of the annual assessment is two percent (2%). The two percent (2%) assessment is based on the sale of overnight room stays. New hotel and motel businesses commenced after the effective date of the ordinance levying the assessment will be exempt from the levy of assessment, pursuant to Streets & Highways Code § 36531 and § 36535.

Section 2. Annual Report. An annual report on the Business Improvement Area has been prepared by the Costa Mesa Conference & Visitor Bureau, acting as the advisory board as required by Streets & Highways Code § 36533 and § 36534. Said report is on file in the City Clerk's Office.

Section 3. Types of Activities To Be Funded. The proposed type or types of activities to be funded by and through the annual levy of assessments on businesses within the Costa Mesa Tourism & Promotion Council Business Improvement Area are specified in the referenced annual report.

Section 4. Method and Basis of Levy. The proposed method and basis of levying the assessment to allow each business owner to estimate the amount of the assessment to be levied against his or her business is set forth in the Costa Mesa Conference & Visitor Bureau's annual report relative to the Business Improvement Area.

Section 5. Time and Place of Public Hearing. The time and place of the public hearing on the business improvement area and the annual levy of assessments shall be at 7:00 p.m., June 16, 2009, at the Costa Mesa City Hall, City Council Chambers, 77 Fair Drive, Costa Mesa, California. At the public hearing set forth above, the testimony of all interested persons for or against the annual levy of assessment for the business improvement area, the extent of the area, or the furnishing of specific types of improvements or activities will be heard by the City Council.

Section 6. Protests. The following rules shall apply to all protests:

- (a) A protest may be made orally or in writing by any interested person. Any protest pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularity or defect to which the objection is made.
- (b) Every written protest shall be filed with the City Clerk's office, Costa Mesa City Hall, Room 101, 77 Fair Drive, Post Office Box 1200, Costa Mesa, California 92626-1200, at or before the time fixed for the public hearing as set forth above.

- (c) The City Council may waive any irregularity in the form or content of any written protest, and at the public hearing, may correct minor defects in the proceedings.
- (d) If written protests are received from the owners of businesses in the proposed business improvement area which will pay fifty percent (50%) or more of the assessments to be levied and protests are not withdrawn so as to reduce the protests to less than the fifty percent (50%), no further proceedings on the proposal to continue the business improvement area assessment, as specified by this resolution of intention, shall be taken by the City Council for a period of one year from the date of the filing of a majority protest.

BE IT FURTHER RESOLVED THAT the City Council of the City of Costa Mesa, California, does hereby adopt the annual report by the Costa Mesa Conference & Visitor Bureau acting as the advisory board on the business improvement area (referenced report on file in the City Clerk's Office), and this Resolution of Intention as set forth herein, and Exhibit "A" which is attached hereto and incorporated by this reference.

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of May, 2009.

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Allan R. Mansoor, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Julie Folcik, City Clerk

\_\_\_\_\_  
Kimberly Hall Barlow, City Attorney

STATE OF CALIFORNIA    )  
COUNTY OF ORANGE     )     ss  
CITY OF COSTA MESA     )

I, JULIE FOLCIK, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that the above and foregoing is the original of Resolution No. 09-\_\_\_\_\_ and was duly passed and adopted by the City Council of the City of Costa Mesa at a regular meeting held on the 5<sup>th</sup> day of May, 2009, by the following roll call vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this 6<sup>th</sup> day of May, 2009.

\_\_\_\_\_  
JULIE FOLCIK, CITY CLERK

(SEAL)



## EXHIBIT A

The Business Improvement Area ("BIA") benefit zone encompasses the entire City of Costa Mesa boundaries. It is anticipated that the entire City, including businesses and residents, will benefit from increased revenues generated by the activities financed by the BIA assessment.

The following businesses will be included in the BIA that is established pursuant to Streets & Highways Code § 36500 *et seq.*, the businesses commonly known as:

### Ayres Hotel & Suites

Property Address: 325 and 345 Bristol Street, Costa Mesa

Business Owner: Bruce Ayres  
1817 Westminster Avenue  
Newport Beach, CA 92660

Donald Ayres, Jr.  
506 Via Lido Nord  
Newport Beach, CA 92663

Property Owner: Homes by Ayres  
355 Bristol Street, Suite A  
Costa Mesa, CA 92626

### Best Western Newport Mesa Inn

Property Address: 2642 Newport Boulevard, Costa Mesa

Business Owner: Somes Hsuen  
Shang-Pu Lee  
2642 Newport Boulevard  
Costa Mesa, CA 92627

### Hilton Orange County/Costa Mesa

Property Address: 3050 Bristol Street, Costa Mesa

Business Owner: Ashford Hospitality Trust

14185 Dallas Parkway, Suite 1100  
Dallas, TX 75254

Holiday Inn Costa Mesa

Property Address: 3131 Bristol Street, Costa Mesa

Business Owner: Hanford Hotels

Property Owner: Hanford Hotels  
4 Corporate Drive, Suite 102  
Newport Beach, CA 92660

Holiday Inn Express Hotel and Suites, Costa Mesa

Property Address: 2070 Newport Boulevard, Costa Mesa

Business Owner: Narendra B. Patel  
2070 Newport Boulevard  
Costa Mesa, CA 92667

Costa Mesa Marriott

Property Address: 500 Anton Boulevard, Costa Mesa

Business Owner: Host Hotels

Property Owner: Marriott Suites, Ltd.  
1 Marriott Way  
Washington, D.C. 02258

Ramada Limited & Suites Costa Mesa

Property Address: 1680 Superior Avenue, Costa Mesa

Business Owner: B.D. Inns Inc./Ramada Ltd.  
1680 Superior Avenue  
Costa Mesa, CA 92627

Residence Inn by Marriott, Costa Mesa

Property Address: 881 Baker Street, Costa Mesa

Business Owner: Residence Inn by Marriott

1 Marriott Way  
Washington, D.C. 02258

Property Owner: Marriott Residence Inn Ltd., Partnership  
10400 Fernwood Road  
Bethesda, MD 20817

The Westin South Coast Plaza

Property Address: 686 Anton Boulevard, Costa Mesa

Business Owner: Host Hotels & Resorts  
6903 Rockledge Drive, Suite 1500  
Bethesda, MD 20817

Property Owner: CJ Segerstrom & Sons  
c/o South Coast Plaza  
686 Anton Boulevard  
Costa Mesa, CA 92626

Wyndham Orange County

Property Address: 3350 Avenue of the Arts, Costa Mesa

Business Owner: Makar Bay North Costa Mesa, LLC  
4100 MacArthur Boulevard, Suite 200  
Newport Beach, CA 92660

**EXHIBIT B**

**COSTA MESA CONFERENCE & VISITOR BUREAU**

**ANNUAL REPORT**

**(Copies available in the City Clerk's office)**